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**IN THE
COURT OF APPEALS OF INDIANA**

VINCENT E. CROSS,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 34A02-0611-CR-1048

APPEAL FROM THE HOWARD SUPERIOR COURT
The Honorable William C. Menges, Jr., Judge
Cause No. 34D01-0605-CM-372

February 21, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Appellant-Defendant Vincent E. Cross (“Cross”) appeals his conviction for Domestic Battery as a Class A misdemeanor.¹ We affirm.

Issue

Cross raises one issue of whether the evidence is sufficient to support his domestic battery conviction.

Facts and Procedural History

Cross and Christine Himes (“Himes”) had been in a romantic relationship for a year and a half and had lived in three different apartments together. The address of the third apartment was 413 South Union in Howard County.

On the afternoon of April 13, 2006, Cross went to 413 South Union to make a phone call, and Himes let him in the apartment. Himes had not seen Cross for two or three days. Himes noticed a woman sitting on Cross’s bike outside the apartment. An argument ensued. Himes asked Cross for his key to their apartment. Thereafter, Cross smacked Himes, knocking her to the ground. Following further argument, Cross choked Himes, forcing her to the ground. After releasing his grip, Cross threw an inhaler at Himes, then proceeded to throw Himes on an air mattress and continued to choke her. In response to the yelling and noise, the neighbors yelled from their apartment that they were calling the police. Cross then let go of Himes and walked out the apartment door. Himes attempted to follow him out the door, but he pushed her back inside the apartment. Shortly thereafter, Himes called the police. Subsequently, the police and an ambulance arrived at Himes’ apartment.

The State charged Cross with Domestic Battery as a Class A misdemeanor. After a bench trial on August 24, 2006, Cross was found guilty as charged. The trial court sentenced Cross to the Howard County Jail for one year, with six months suspended to probation. Cross now appeals.

Discussion and Decision

Cross contends that there is insufficient evidence to support his conviction for domestic battery. The standard of review when considering the sufficiency of evidence is well settled. We will not reweigh the evidence or judge the credibility of the witnesses. Battle v. State, 818 N.E.2d 56, 58 (Ind. Ct. App. 2004). Rather, we look to the evidence most favorable to the verdict and the reasonable inferences to be drawn therefrom. Id. We will affirm the conviction if there is probative evidence from which a reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt. Id.

To convict Cross of Domestic Battery as a Class A misdemeanor under Indiana Code Section 35-42-3-1.3, the State was required to show that Cross: (1) knowingly or intentionally touched Himes, (2) in a rude, insolent, or angry manner, (3) causing bodily injury. The State also was required to show that Himes was a spouse, was living as if a spouse, or has a child in common with Cross. I.C. § 35-42-3-1.3(a).

Cross's first contention is that Himes was not living with Cross as if she was his spouse. In making this determination, Indiana Code Section 35-42-3-1.3(c) provides factors that a trial court must consider: (1) duration of the relationship, (2) frequency of contact, (3) financial interdependence, (4) whether the individuals are raising children together, (5)

¹ Ind. Code § 35-42-3-1.3.

whether the individuals were engaged in tasks in an effort to maintain a common household, and (6) other factors the court considers relevant.

Both Himes and Cross testified that they had been involved in a romantic relationship for over a year and had been cohabitating. At the time of the incident, Cross still had a key to the shared apartment. Subsection (c) of the domestic battery statute provides that a trial court must consider the enumerated factors in its determination of whether the two individuals were living as if spouses, but does not mandate that each factor must be satisfied. When the character of the relationship clearly warrants application of the domestic battery statute, such as when the couple is cohabiting and engaged in an ongoing romantic relationship, a court would not need to undertake further analysis. Williams v. State, 798 N.E.2d 457, 461 (Ind. Ct. App. 2003). At the time of the incident, Himes learned that Cross was ending their relationship and attempting to retrieve his belongings from their joint apartment, because he had started a new romantic relationship with someone else. Despite Cross's intention to end his domestic living arrangement with Himes, it can reasonably be inferred from the evidence that their relationship and cohabitation existed when he entered the apartment. Thus, the character of their relationship clearly warrants the application of the domestic battery statute.

Second, Cross maintains that his conviction cannot stand because Himes' testimony was "incredibly dubious." In general, the uncorroborated testimony of one victim is sufficient to sustain a conviction. Holeton v. State, 853 N.E.2d 539, 541 (Ind. Ct. App. 2006). By the same token, under the "incredible dubiousity" rule, a reviewing court will impinge on the factfinder's responsibility to judge the credibility of the witness only when it

has confronted inherently improbable testimony or coerced, equivocal, wholly uncorroborated testimony of “incredible dubiousity.” Id. If a sole witness presents incredibly dubious or inherently improbable evidence such that no reasonable person could believe it and there is a complete lack of circumstantial evidence, a defendant’s conviction may be reversed. Id. However, discrepancies between a witness’s trial testimony and earlier statements made to police and in depositions do not render such testimony “incredibly dubious.” Id.

Cross notes that Himes was the sole witness for the State, and her testimony was the only evidence presented by the State.² However, the lack of corroborating evidence is not enough to fulfill the incredible dubiousity rule. Cross must demonstrate that Himes’ testimony is inherently improbable to the point that no reasonable person could believe it. Cross points to the inconsistencies between Himes’ testimony and her statements made in her Domestic Violence Affidavit. In her Affidavit, Himes states that she was slapped twice and choked once, but in her trial testimony, she said that she was slapped once and choked twice. Also, Himes testified that Cross threw her against a television stand, which was not mentioned in her affidavit. These discrepancies were brought to light during the cross-examination of Himes. As previously stated, discrepancies between a witness’s trial testimony and earlier statements made to police and in depositions do not render such testimony “incredibly

² Cross’ brief includes in the Statement of Facts that there was no mention in the police report of any marks or redness on Himes’ face and cites to the trial transcript on page 19. Appellant’s Brief at 2. This statement about the police report is contained in defense counsel’s question and not Himes’ testimony: “Q: Twice in your affidavit. There was nothing in the officer’s report about a red face, ma’am, no mark on your face. Did you have a mark on your face?” Furthermore, the police report was not entered into evidence. Therefore, this statement is not a part of the evidence before us.

dubious.” Cross has not demonstrated that the incredible dubiousity rule is applicable here, because Himes’ testimony was not inherently contradictory, equivocal or coerced. Thus, any inconsistencies go to the weight of the evidence and credibility of a witness’s testimony. Id. at 542. Cross simply asks this Court to negatively assess Himes’ credibility absent the exceptional circumstances that support the application of the incredible dubiousity rule. This we cannot do. Accordingly, the State presented sufficient evidence to support Cross’ conviction.

Affirmed.

VAIDIK, J., and BARNES, J., concur.